IN THE

Supreme Court of the United States

OCTOBER TERM 1936

No. .....

CHAS. C. STEWARD MACHINE COMPANY,
Petitioner,

v.

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

BORDEN BURR,
WALTER BOULDIN,
WM. LOGAN MARTIN,
Attorneys for Petitioner,
Birmingham, Alabama.

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I.

OPINION OF THE COURT OF APPEALS

The opinion of the Court of Appeals for the Fifth Circuit is contained in the record (p. ——).

II.

JURISDICTION

The statutory provision sustaining the jurisdiction of the Court is contained in 28 U. S. C. A., § 347 (a). The

Circuit Court of Appeals on March 20, 1937 affirmed the decision of the District Court of the United States for the Southern Division of the Northern District of Alabama, dismissing petitioner's bill of complaint, in which petitioner had sought a judgment against the collector of internal revenue of Alabama, for $46.14, which petitioner had paid the collector as a tax imposed by the Social Security Act of Congress (herein called the Federal Act). (42 U.S.C.A., § 301, et seq.)

III.

STATEMENT OF THE CASE

Petitioner adopts as a statement of facts the Summary Statement of Matter Involved as set out in the petition for the writ (p. 1).

IV.

ERRORS OF THE COURT BELOW WHICH ARE RELIED ON IN THE PETITION

The Court below affirmed the judgment of the District Court, and in its opinion decided, among other things, the following:

(a) Title IX is complete in itself and is separable from the remainder of the Act. The appropriation of $49,000,000 in Title III does not correspond with the tax raised under Title IX so as to justify the court in regarding the two as vitally joined in spite of the separability section (1103).

(b) If the Social Security Board and its function (fixed under Title VII) be unconstitutional, the im-

mediate effect would be to render the credit impossible and leave the full tax to be collected.

(c) The tax and credit scheme has been devised by Congress for the purpose of refilling the treasury (in respect to the recent expenditure by the United States of several billions for relief, the primary duty and burden of which rests on the several states) and of encouraging the states to assume for the future their proper burden.

(d) There is in the Federal Act no undue coercion or compulsion on the state.

(e) While the subject of unemployment is admittedly a matter primarily for the states, the recent experience of the federal treasury in providing relief funds is also involved, and the reasonable protection of the treasury is part of the general welfare in a constitutional sense. Thus grants to aid state agencies (under Title III) whose operation will tend to protect the federal treasury are justified.

(f) The tax is calculated to raise more money than is appropriated to aid state administrations even if all the states establish them, and the net result of it will be to put money into the federal treasury as well as to aid federally protective state activities.

(g) The credit is not a penalty or coercion on the taxpayer.

(h) The imposition of the tax on employers of eight or more does not deny due process or take property without just compensation.

V.

ARGUMENT

The facts stated in the bill of complaint as justifying a judgment against the respondent are that petitioner had paid the respondent the sum of $46.14 as a tax on employers of eight or more and as required by Section 1101 of the Federal Act. This tax was one-tenth of one per cent. of the amount of wages paid by petitioner to its employees during the year 1936.[1]

As summarized by the Court of Appeals in its opinion the petitioner sought recovery on the ground that the Federal Act was unconstitutional and void for the following reasons:

1. The Federal Act in purpose and effect coerces the enactment by the states of unemployment compensation laws.

2. It violates the Ninth and Tenth Amendments of the Constitution by setting up a federal system of unemployment compensation by controlling the administration of the state statutes and the moneys raised under them, thus intruding on the constitutional power and jurisdiction of the states.

3. By the system so created the property of the employers is taken without just compensation for the benefit of an arbitrarily defined class.

4. The taxes imposed under the Act are not for revenue to support the Government for constitutional pur-

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[1]The Alabama Unemployment Compensation Law (General Acts 1935, page 950) imposed on petitioner for the same period a like tax of nine-tenths of one per cent., which petitioner paid and for which he received credit (Federal Act, Sec. 1102) before paying to the respondent the tax which is the basis of this suit.

poses, but for the purpose of providing funds to support state administrations in matters beyond the province of the Congress to control.

5. The Act violates Article I, Section 1 of the Constitution by investing legislative authority in the Social Security Board in its stated activities.

It is the position of petitioner that the foregoing averments in the bill of complaint are adequately supported both by the provisions of the Act and the history of its origin and passage. That repetition may be avoided we beg leave to refer to brief heretofore filed in support of petition for writ of certiorari in the case of *Beeland Wholesale Company, et al. v. Davis,* No. 802, now pending in this Court, wherein we have set out, perhaps at too great length for this purpose, an analysis of the pertinent features of the Act and a summary of the history of the times and general purposes of the legislation as indicated in messages of the President, hearings before committees and statements made in debate on the floor of Congress. We adopt for the purposes of this brief subjects 5 and 6 found on pages 12-39 of the brief in No. 802, which we respectfully invite to the attention of the Court and of which we ask the Court's consideration.

Respectfully submitted,

BORDEN BURR,

WALTER BOULDIN,

WM. LOGAN MARTIN,
Attorneys for Petitioner.